



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2003

Ms. Rebecca L. Payne
Assistant General Counsel
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2003-7348

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189576.

The Texas Department of Human Services (the "department") received a request for (1) a complaint history for complaints filed since January 1997 against a named home health agency, and (2) the most recent licensing application regarding that agency or its parent organization, including the identity and address of the current owner(s). You state that most of the responsive information is being released to the requestor. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that the submitted documents contain information concerning the existence of criminal convictions provided to the department by the healthcare facility as required under section 142.004 of the Health & Safety Code, and that these records are confidential under section 142.004(d). Section 142.004(d) provides:

Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

Health & Safety Code § 142.004(d). Based on your representations and our review of the submitted information, we agree that the information you have highlighted related to the existence of criminal convictions is confidential and must be withheld by the department under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code.

Next, you contend that the social security numbers contained in the submitted documents are confidential under section 552.101 in conjunction with section 231.302 of the Family Code. Section 231.302 provides in relevant part:

(c) To assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669):

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number[.]

....

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Part A or D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq).

....

(g) In this section, "licensing authority" has the meaning assigned by Section 232.001.

Fam. Code § 231.302(c)(1), (e), (g). You inform us that the department is a licensing authority subject to section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as department of state that issues license). Further, you explain that, in this instance, release of the social security numbers would not be for a permitted purpose under section 231.302(e) of the Family Code. *See* Fam. Code § 231.302(e). Based on your representations and our review of the information, we conclude the department must withhold the social security numbers contained in the submitted records in accordance with section 552.101 in conjunction with section 231.302(e) of the Family Code.¹

¹Because we resolve this aspect of your request under section 231.302, we need not address your other arguments for withholding the social security numbers.

In summary, the department must withhold the information it has highlighted under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code. The department must also withhold the social security numbers in the submitted information under section 552.101 in conjunction with section 231.302(e) of the Family Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long, sweeping horizontal stroke at the end.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 189576

Enc. Submitted documents

c: Mr. Robert Wharton
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(w/o enclosures)